

## **Article 1. General**

1. These terms and conditions are applicable to all offers, quotes and agreements between Nishikigoi Vereniging Nederland, hereinafter referred to as "the User" and a Counterparty to whom the User has declared these terms and conditions applicable, insofar as these terms and conditions are not deviated from explicitly in writing by the parties.
2. These terms and conditions are also applicable to agreements with the User for the performance of which the User needs to engage third parties.
3. These general terms and conditions have also been produced for the User's members and governing board.
4. The applicability of any purchasing terms or other conditions of the Counterparty is explicitly rejected.
5. If at any time one or more provisions of these general terms and conditions is fully or partially null and void or annulled, the remaining provisions of these general terms and conditions will continue to apply in full. The User and the Counterparty will in that case consult each other in order to agree new provisions to replace the null and void or annulled provisions, honouring the purpose and substance of the original provisions insofar as is possible.
6. Where there is any ambiguity concerning the interpretation of one or more provisions of these general terms and conditions, interpretation will take place according to the 'spirit' of the provision(s).
7. If a situation not provided for in these general terms and conditions arises between the parties, the situation shall be assessed in light of the spirit of these general terms and conditions.
8. If the User does not always require strict compliance with these terms and conditions this will not mean that the provisions are not applicable or that the User to any extent loses the right to require strict compliance with the provisions of these terms and conditions in other cases.

## **Article 2. Offers and Quotes**

- 1 All offers and quotes by the User are free of obligation unless a period for acceptance is stated in the quote. An offer or quote will lapse if the product to which the offer or quote relates becomes unavailable in the meantime.
- 2 The User cannot be bound by its offers or quotes if the Counterparty can reasonably understand that the offers or quotes or part thereof contain(s) a manifest mistake or clerical error.
- 3 The prices specified in an offer or quote are exclusive of VAT and other government levies as well as any costs to be incurred in the context of an agreement, including travel, accommodation, dispatch and administration costs, unless stated otherwise.
- 4 If the acceptance deviates from the content of the offer or quote, whether in terms of minor points or otherwise, the User will not be bound by it. In that case the agreement will not be concluded in accordance with such acceptance, unless the User indicates otherwise.
- 5 The quoting of a price for a number of items will not oblige the User to fulfil a portion of the order at a corresponding portion of the quoted price. Offers and quotes do not apply automatically to future orders.

## **Article 3. Term of Contract; Delivery Periods, Performance and Amendment of Agreement**

1. The agreement between the User and the Counterparty is entered into for an indefinite period, unless the nature of

the agreement implies otherwise or the parties explicitly agree otherwise in writing.

2. If a period is agreed or specified for the completion of particular work or the delivery of particular goods, that period will never be a final deadline. In the event of failure to perform within a period, the Counterparty must therefore issue a written notice of default to the User in which the User is granted a reasonable period within which to perform the agreement.
3. If the User requires information from the Counterparty for the performance of the agreement, the period for performance will not commence before the Counterparty has made full and accurate information available to the User.
4. Delivery will take place ex works (User's premises). The Counterparty will be obliged to accept the goods at the moment they are made available to that party. If the Counterparty refuses acceptance or fails to provide the information or instructions necessary for delivery, the User will be entitled to store the goods at the account and risk of the Counterparty.
5. The User is entitled to arrange for certain work to be performed by third parties.
6. The User is entitled to perform the agreement in various phases and to invoice parts of the agreement performed as such individually.
7. If the agreement is performed in phases the User can suspend the performance of those parts of the agreement belonging to a later phase until the Counterparty has given written approval for the results of the preceding phase.
8. If during the performance of the agreement it becomes apparent that it will be necessary to change or supplement the agreement in order to enable it to be performed properly, the parties will consult each other in a timely fashion in order to agree on amending the agreement. If the nature, scope or content of the agreement is amended, either at the request or instruction of the Counterparty, competent authorities etc or otherwise, thereby leading to a quantitative and/or qualitative amendment to the agreement, this may also have consequences for the provisions that were originally agreed. As a result, the originally agreed price may be increased or reduced. Where possible the User will give a price quote in advance. As a result of an amendment to the agreement, the originally specified period for performance may also be changed. The Counterparty accepts the possibility that the agreement may be amended, including the provisions stipulating the price and the period for performance.
9. If the agreement is amended or supplemented, the User will be entitled not to perform the amended agreement until approval has been given by the authorised person on the part of the User and the Counterparty has approved the price quoted and other terms specified for performance, including the time at which the agreement will be performed. Failure to perform the amended agreement or to perform it immediately will not constitute breach of contract by the User and will not justify termination of the agreement by the Counterparty. The User may refuse a request for the amendment of the agreement without thereby defaulting if the requested amendment would have quantitative and/or qualitative consequences for, for instance, the work to be performed or the goods to be supplied.

10. If the Counterparty defaults in the proper performance of its obligations to the User, the Counterparty will be liable for all losses (including costs) incurred on the part of the User either directly or indirectly.
  11. If the User agrees a fixed price with the Counterparty, the User will nevertheless be entitled to raise that price at any time without the Counterparty then being entitled to dissolve the agreement on that basis if the price increase arises from an entitlement or obligation pursuant to law or regulations or is caused by an increase in the price of raw materials, wages etc or by other factors that were not reasonably foreseeable at the time when the agreement was concluded.
  12. If a price increase otherwise than as a consequence of an amendment to the agreement amounts to more than 10% and takes place within three months after the agreement is concluded, the Counterparty will only be entitled to dissolve the agreement by means of a written declaration if it can invoke Book 6, Part 3, Title 5 of the Dutch Civil Code, unless the User is then willing to perform the agreement on the basis of its original provisions or unless the price increase arises from an entitlement or an obligation of the User pursuant to law or if it has been agreed that delivery will take place more than three months after purchase.
7. If the agreement is terminated early by the User, the User will arrange, in consultation with the Counterparty, for any work yet to be performed to be assigned to third parties. This shall apply unless the termination is attributable to the Counterparty. If the User incurs extra costs for the assignment of the work to third parties, those costs will be charged to the Counterparty. The Counterparty will be obliged to pay those costs within the specified period unless the User indicates otherwise.
  8. In the event of winding up, or a moratorium on payments or bankruptcy being applied for or granted in relation to the Counterparty, or attachment against the Counterparty – if and insofar as the attachment is not lifted within three months – or debt rescheduling or any other circumstance as a result of which the Counterparty can no longer dispose freely of its assets, the User will be free to terminate the agreement without delay and with immediate effect or to cancel the order or agreement without any obligation on its part to pay compensation or reimburse losses. In that case amounts owed to the User by the Counterparty will become payable immediately.
  9. If the Counterparty fully or partially cancels an order that has been placed, the goods that have been ordered or prepared for that order plus any associated costs as well as the hours of labour reserved for performance of the agreement, will be charged to the Counterparty in full.

#### **Article 4. Suspension, Dissolution and Early Termination of the Agreement**

1. The User will be entitled to suspend its compliance with obligations or to dissolve the agreement if:
  - the Counterparty does not comply with obligations under the agreement or do so fully or in a timely fashion;
  - after the agreement has been concluded the User becomes aware of circumstances on the basis of which it has good grounds to fear that the Counterparty will not comply with its obligations;
  - the Counterparty was asked upon conclusion of the agreement to provide security for compliance with its obligations under the agreement and that security has not been provided or is insufficient;
  - if due to delay on the part of the Counterparty the User can no longer be expected to comply with the agreement under the originally agreed conditions, the User will be entitled to dissolve the agreement.
2. The User will also be entitled to dissolve the agreement if circumstances arise of such a nature that compliance with the agreement is impossible or if other circumstances arise that are of such a nature that the continuation of the agreement in unamended form cannot reasonably be expected of the User.
3. If the agreement is dissolved, amounts owed to the User by the Counterparty will become payable immediately. The User will retain its rights under the law and the agreement in the event of suspending compliance with its obligations.
4. In the event of suspension or dissolution by the User, the latter will not be bound to pay compensation for any form of losses and costs that may arise as a result in any way whatsoever.
5. If the dissolution is attributable to the Counterparty, the User will be entitled to compensation of the losses, including costs, that arise directly and indirectly as a result.
6. If the Counterparty does not comply with its obligations under the agreement and that non-compliance justifies

#### **Article 5. Force Majeure**

1. The User will not be obliged to comply with any obligation to the Counterparty if obstructed from doing so as a result of a circumstance that is not attributable to the User's culpability and is not deemed to be for the User's account pursuant to the law, a juridical act or general opinion.
2. In the context of these general terms and conditions, force majeure is understood, in addition to its meaning according to statute and case law, to mean all foreseen or unforeseen external factors over which the User is unable to exercise any influence but which result in the User being unable to comply with its obligations. This includes strikes at the User's business or the businesses of third parties. The User is also entitled to invoke force majeure if the circumstance that obstructs compliance or further compliance with the agreement arises after the User ought to have complied with its obligation.
3. During the period in which force majeure persists the User can suspend its obligations arising from the agreement. If this period lasts longer than two months each of the parties will be entitled to dissolve the agreement, without being under any obligation to compensate the losses of the other party.
4. Insofar as the User has partially complied or will be able to partially comply with its obligations under the agreement at the time when the force majeure arises and the partial compliance is independently of value, the User will be entitled to invoice separately for the partial compliance that has taken place or will take place. The Counterparty will be obliged to pay that invoice as if a separate agreement was at issue.

#### **Article 6. Payment and Collection Costs**

1. Payment shall be made within 14 days after the invoice date in the manner specified by the User and in the currency in which the invoice is denominated, unless the User states otherwise in writing. The User is entitled to send periodic invoices.
2. If the Counterparty fails to make timely payment of an invoice, that party will be in default by operation of law. The Counterparty will then be liable to pay interest of 1% per month unless the statutory interest rate is higher, in which case the statutory interest will be payable. The interest on the amount due will be calculated from the time that the Counterparty is in default until the time at which full payment of the amount due is made.
3. The User will be entitled to deduct the payments made by the Counterparty initially from the costs, then from the accumulated interest and finally from the principal sum and the accruing interest.
4. The User may, without defaulting, refuse an offer of payment if the Counterparty indicates a different order for the apportionment of the payment. The User may refuse full repayment of the principal sum if the accumulated and accruing interest and collection costs are not also covered.
5. The Counterparty will never be entitled to set off the amount due to the User against other sums.
6. Objections against the amount of an invoice will not suspend the obligation to make payment. The Counterparty will not be entitled to suspend payment of an invoice for any other reason if that party is unable to invoke Book 6, part 5, title 3 (articles 231 to 247) of the Dutch Civil Code.
7. If the Counterparty fails or defaults in respect of compliance or timely compliance with its obligations, all reasonably incurred costs to obtain fulfilment thereof out of court will be for the account of the Counterparty. The extrajudicial costs will be calculated based on what is customary in Dutch debt collection practice, which is currently the method of calculation in accordance with the 'Voorwerk II' report. However, if the User incurs higher collection costs and those higher costs were reasonably necessary, the costs actually incurred will qualify for reimbursement. Any costs of court action and enforcement will also be recovered from the Counterparty. The Counterparty will also be liable to pay interest on the collection costs that are due.

#### **Article 7. Retention of Title**

1. All goods supplied by the User in the context of the agreement remain the property of the User until the Counterparty has properly complied with all obligations arising from the agreement(s) concluded with the User.
2. Goods supplied by the User and covered by the retention of title pursuant to paragraph 1 are not permitted to be sold on to third parties and may never be used as a means of payment. The Counterparty is not entitled to pledge or otherwise encumber goods covered by the retention of title.
3. The Counterparty shall always do everything that can reasonably be expected of it to safeguard the User's property rights.
4. The Counterparty is obliged to inform the User immediately if third parties attach goods supplied under retention of title or wish to establish or enforce rights in respect of such goods.

5. The Counterparty is obliged to insure and maintain the insurance on the goods supplied under retention of title against fire, damage caused by explosion and water and against theft, and to allow the User to inspect the insurance policy at its first such request. The User will be entitled to any payout made under the policy. Insofar as is necessary the Counterparty undertakes the obligation to the User in advance to co-operate with anything that is or may prove to be necessary or desirable in this connection.
6. In the event that the User wishes to exercise the property rights referred to in this article, the Counterparty grants advance, unconditional and irrevocable consent to the User and to third parties appointed by the User to access all places where the User's property is located and to recover such goods.

#### **Article 8. Guarantees, Inspection/Investigation, Complaints and Prescription Period**

1. The goods to be supplied by the User comply with the customary requirements and standards that may reasonably apply to them at the time of delivery. The guarantee referred to in paragraph 1 of this article is applicable for a period of three months following delivery, unless the nature of the product implies otherwise or the parties have agreed otherwise. If the guarantee provided by the User relates to goods produced by a third party it will be limited to the guarantee provided by the producer thereof, unless specified otherwise.
2. Any form of guarantee will lapse if a defect is caused by or arises from incompetent or improper use or use after the use-by date, incorrect storage or maintenance by the Counterparty and/or by third parties, the Counterparty or third parties having made changes or attempted to make changes to the item without the written permission of the User, other items having been fitted to it that should not have been fitted to it or the item having been processed or treated in a manner other than was prescribed. The Counterparty will not be able to make any claim under a guarantee if the defect arises from or is caused by circumstances over which the User is unable to exercise any influence, including weather conditions (including but not limited to extreme rainfall or temperatures) and such like.
3. The Counterparty is obliged to inspect (or arrange for the inspection of) the delivered goods or the work performed immediately upon their having been made available to that party or having been performed respectively. In doing so the Counterparty must inspect whether the quantity and/or quality corresponds with what was agreed and meets the requirements that the parties have agreed in this respect. Any visible defects shall be reported to the User in writing within seven days after delivery/provision. Any defects that are not visible shall be reported to the User in writing without delay and in any case no later than fourteen days after discovery thereof. The report shall include as detailed a description of the defect as is possible so that the User is able to respond appropriately. The Counterparty shall give the User the opportunity to investigate a complaint or to arrange for it to be investigated.
4. If the Counterparty lodges a complaint in a timely fashion this will not suspend its payment obligation. In such cases the Counterparty will remain obliged to accept and pay for the rest of the goods that have been ordered.

5. If a defect is reported late, the Counterparty will no longer be entitled to any repair, replacement or compensation.
6. If it has been established that an item is defective and a timely complaint has been lodged in this respect, the User will, at its own discretion – within a reasonable period after it has been returned or, if return is not reasonably possible, written notification of the defect by the Counterparty – either replace or arrange for a repair or make a payment to the Counterparty in lieu thereof. In the event of replacement the Counterparty will be obliged to return the replaced item to the User and transfer it into the User's ownership, unless the User indicates otherwise.
7. If it is established that a complaint is unfounded the full costs that arise for the User, including the investigation costs, will be for the account of the Counterparty.
8. Following the expiry of the guarantee period all costs of repair or replacement, including administrative, postage and call-out costs will be charged to the Counterparty.
9. In deviation from the statutory prescription periods, all claims and defences against the User and the third parties engaged by the User for the performance of the agreement will expire by prescription after one year.

#### **Article 9. Liability**

1. In cases where the User is liable, its liability will be limited as stipulated in this provision.
2. The User is not liable for losses of any nature whatsoever arising from the User having acted on incorrect and/or incomplete information supplied by or on behalf of the Counterparty.
3. If the User is liable for any losses, the User's liability will be limited to a maximum of double the invoice amount for the order or that portion of the order to which the liability relates.
4. The liability of the User will never exceed the amount paid out by its insurer in any such case.
5. The User is liable only for direct losses.
6. Direct losses are understood to mean only the following: reasonable costs for establishing the cause and extent of losses, insofar as this relates to losses within the meaning of these terms and conditions; any reasonable costs incurred to ensure that the User's defective performance complies with the agreement insofar as is attributable to the User; and reasonable costs incurred to avoid or limit losses, insofar as the Counterparty demonstrates that these costs have led to a limitation of the direct losses within the meaning of these general terms and conditions.
7. The User will never be liable for indirect losses, including consequential losses, loss of profit or opportunities for savings or losses due to interruptions to business.
8. The limitations of liability stipulated in this article do not apply if the losses are attributable to deliberate intent or gross culpability on the part of the User or its management/subordinates.

#### **Article 10. Transfer of Risk**

1. The risk of loss, damage or reduction in value will transfer to the Counterparty at the moment that goods come under the control of the Counterparty.

#### **Article 11. Indemnification**

1. The Counterparty indemnifies the User for any claims by third parties who incur losses in connection with the performance of the agreement, the cause of which is attributable to a party other than the User.
2. If the User is challenged by third parties in this connection, the Counterparty will be obliged to assist the User both in and out of court and to do anything that may be expected of it in such cases without delay. If the Counterparty fails to take proper steps the User will be entitled to do so itself without notice of default being required. All costs and losses incurred by the User and third parties as a result will then be for the full account and risk of the Counterparty.

#### **Article 12. Intellectual Property**

1. The User retains the rights and entitlements accruing to it under the Copyright Act (Dutch title: *Auteurswet*) and other laws and regulations on intellectual property. The User is entitled to use the know-how it acquires in the performance of an agreement for other purposes insofar as no strictly confidential information of the Counterparty is revealed to third parties.

#### **Article 13. Applicable Law and Disputes**

1. Dutch law shall apply exclusively to all legal relationships to which the User is party, even if an obligation is fulfilled partly or entirely abroad or if the party involved in the legal relationship is domiciled in another country. The applicability of the Vienna Sales Convention is excluded.
2. The court in the User's place of business will have exclusive jurisdiction to take cognizance of disputes unless the law stipulates otherwise in a manner that permits no derogation. Nevertheless the User will be entitled to submit the dispute to the court that has jurisdiction according to the law.
3. The parties will not involve the courts until they have made their best efforts to resolve a dispute by agreement.

#### **Article 14. Filing of and Amendments to the Terms and Conditions**

1. These terms and conditions have been filed with the Chamber of Commerce in Arnhem.
2. The version filed most recently or the version which applied at the time that the legal relationship with the User was established shall be applicable.
3. The Dutch-language version of the general terms and conditions shall always be decisive in matters of interpretation.